

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MITCHELL B. HOWARD

Claimant

VS.

LARIO ENTERPRISES, INC.

Respondent

AND

HARTFORD ACCIDENT & INDEMNITY COMPANY

Insurance Carrier

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Docket No. 219,821

ORDER

Respondent and its insurance carrier appealed the Award dated May 22, 1998, entered by then Assistant Director Brad E. Avery. The Appeals Board heard oral argument in Topeka, Kansas, on January 13, 1999.

APPEARANCES

Beth Regier Foerster of Topeka, Kansas, appeared for the claimant. David R. Cooper of Topeka, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for an October 4, 1996 accident. After finding that claimant had provided respondent with timely notice of accident, the Assistant Director awarded claimant medical benefits, six weeks of temporary total disability benefits, and permanent partial disability benefits for a 15 percent functional impairment to the right leg.

Respondent and its insurance carrier contend the claim is barred because claimant allegedly failed to provide timely notice of the accident. Conversely, claimant contends that he provided notice to respondent within ten days of the injury.

The only issue before the Board on this appeal is whether claimant provided respondent with timely notice of the accidental injury as required by K.S.A. 44-520.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

- (1) Mr. Howard injured his right knee on or about October 4, 1996, while working for Lario Enterprises. The parties stipulated that the accident arose out of and in the course of employment.
- (2) At the time of the injury, Mr. Howard had worked for Lario as a construction laborer for approximately 12 years.
- (3) The knee injury did not occur as the result of single traumatic event. Instead, Mr. Howard noticed soreness and swelling in his right knee on October 4, 1996, after spending most of the day on his knees painting baseboard.
- (4) The Appeals Board affirms the Assistant Director's finding that Mr. Howard gave Lario Enterprises timely notice of the accidental injury. The Appeals Board is persuaded that on October 4, 1996, Mr. Howard told his supervisor, Dan Holm, that he had injured his knee earlier that day while painting baseboard.
- (5) The Appeals Board adopts the findings and conclusions set forth by the Assistant Director to the extent they are not inconsistent with the above.

CONCLUSIONS OF LAW

The Award should be affirmed.

The Workers Compensation Act requires injured workers to give their employers notice of their accidental injury within ten days of its occurrence.¹ Mr. Howard's notice to Lario was timely as it was provided on October 4, 1996.

¹K.S.A. 44-520.

AWARD

WHEREFORE, the Appeals Board affirms the Award dated May 22, 1998, entered by Assistant Director Brad E. Avery.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
David R. Cooper, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director